

and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full not later than 60 days after receipt of the final decision, unless otherwise ordered in the decision.

§ 7.42 Enforcement of EEOC final decisions.

(a) *Petition for enforcement.* A Complainant may petition the EEOC for enforcement of a decision issued under the EEOC's appellate jurisdiction. The petition shall be submitted to the Office of Federal Operations. The petition shall specifically provide the reasons that led the Complainant to believe that the Department is not complying with the decision.

(b) *Referral to the EEOC.* Where the Director, Office of Federal Operations, is unable to obtain satisfactory compliance with the final decision, the Director shall submit appropriate findings and recommendations for enforcement to the EEOC, or, as directed by the EEOC, refer the matter to another appropriate Department.

(c) *EEOC notice to show cause.* The EEOC may issue a notice to the Secretary that the Department has failed to comply with a decision and to show cause why there is noncompliance. Such notice may request the head of the Department or a representative to appear before the EEOC or to respond to the notice in writing with adequate evidence of compliance or with compelling reasons for non-compliance.

(d) *Notification to complainant of completion of administrative efforts.* Where the EEOC has determined that the Department is not complying with a prior decision, or where the Department has failed or refused to submit any required report of compliance, the EEOC shall notify the Complainant of the right to file a civil action for enforcement of the decision pursuant to title VII, the ADEA, the Equal Pay Act or the Rehabilitation Act and to seek judicial review of the Department's refusal to implement the ordered relief in accordance with the Administrative Procedure Act (5 U.S.C. 701 *et seq.*), and the mandamus statute (28 U.S.C. 1361), or to commence new proceedings in accordance with the appropriate statutes.

§ 7.43 Settlement agreements.

(a) The Department shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. These efforts shall include ADR. Any settlement reached shall:

- (1) Be in writing;
- (2) Identify the claims resolved;
- (3) Be signed by both parties and/or their designees; and
- (4) Otherwise comply with 29 CFR part 1614.

(b) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. Final action that has not been the subject of an appeal or civil action shall be binding on the Department. If the Complainant believes that the Department has failed to comply with the terms of a settlement agreement or decision, the Complainant shall notify the Director of EEO, in writing, of the alleged noncompliance within 30 days of when the Complainant knew or should have known of the alleged noncompliance. The Complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(c) The Department shall resolve the matter and respond to the Complainant, in writing. If the Department has not responded to the Complainant, in writing, or if the Complainant is not satisfied with the Department's attempt to resolve the matter, the Complainant may appeal to the EEOC for a determination as to whether the Department has complied with the terms of the settlement agreement or final decision. The Complainant may file such an appeal 35 days after the Complainant has served the Department with the allegations of noncompliance, but must file an appeal within 30 days of the Complainant's receipt of the Department's determination. The Complainant must serve a copy of the appeal on the Department and the Department may submit a response to the

§ 7.44

EEOC within 30 days of receiving notice of the appeal.

§ 7.44 Interim relief.

(a) When the Department appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the EEOC Administrative Judge's decision orders retroactive restoration, the Department shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Department appeal. The employee may decline the offer of interim relief.

(b) Service under the temporary or conditional restoration provisions of paragraph (a) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the EEOC upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure, if the EEOC reverses the decision on appeal.

(c) When the Department appeals, the Department may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the Complainant until after the appeal is resolved. If the Department delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the Department to make the payment, then the Department shall pay interest from the date of the original decision until payment is made.

(d) The Department shall notify the EEOC and the employee in writing at the same time the Department appeals that the relief the Department provides is temporary or conditional and, if applicable, that the Department will delay the payment of any amounts owed but will pay interest as specified in paragraph (c) of this section. Failure of the Department to provide notification will result in the dismissal of the Department's appeal.

(e) The Department may, by notice to the Complainant, decline to return the Complainant to the Complainant's

24 CFR Subtitle A (4-1-03 Edition)

place of employment if the Department determines that the return or presence of the Complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the Complainant to the Complainant's place of employment is not reviewable. A grant of interim relief does not insulate a Complainant from subsequent disciplinary or adverse action.

(f) If the Department files an appeal and has not provided required interim relief, the Complainant may request dismissal of the Department's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the Department's appeal. A copy of the request must be served on the Department at the same time the request is filed with EEOC. The Department may respond with evidence and argument to the Complainant's request to dismiss within 15 days of the date of service of the request.

STATISTICS AND REPORTING REQUIREMENTS

§ 7.45 EEO group statistics and reports.

(a) The Department shall establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability of its employees and applicant flow in accordance with 29 CFR 1614.601 through 29 CFR 1614.602 and the Department shall report to the EEOC on employment by race, national origin, sex and disability, in the form and at such times as the EEOC may require.

(b) The Department shall report to the EEOC information concerning pre-complaint counseling and the status, processing and disposition of complaints under this part, at such times and in such manner as the EEOC prescribes.

(c) The Department shall advise the EEOC whenever the Department is served with a Federal court complaint based upon a complaint that is pending on appeal at the EEOC.

(d) The Department shall submit annual written national equal employment opportunity plans of action for